

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney A. Wolff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the rules of the current agreement,

1. When on April 30, 1954 the Railway Express Agency discontinued its Agent at Glasgow, Montana and the Carrier compelled employees of our craft to perform the services of an Express Agent.
2. That the Carrier now be required to compensate Geo. I. Russell for one day's pay at his regular rate for April 30, 1954, and one additional day for each and every day thereafter that he was required to perform this work, up to the date that the Express Agency was reinstated.

EMPLOYEES' STATEMENT OF FACTS: Glasgow, Montana for many years past has had an exclusive Express Agency and express at that point has always been handled by the Express employees who have a separate office building. Effective April 30, 1954 the Express Company discontinued this service and the Carrier instructed Geo. I. Russell, a Yard Clerk and Baggage-man at Glasgow, Montana, to perform this work in addition to his own. Many valuables, including cash, perishables, etc., were being handled at this time. Mr. Russell had to assume responsibility for all these valuables which had formerly been handled by the Express Agency. There was no one on hand to guard the valuables and it was up to him, under instructions from the Carrier, to perform the Express Agency work.

POSITION OF EMPLOYEES: It is the Employees' contention that this agency work was not a part of the regular duties of the employees because of the fact that this was an exclusive agency. Our employees have never been required in the past to perform work directly for the Express Company. Railway employees such as Telegraphers and Agents perform some similar work and they are paid commissions for the handling of same. Our employees received no payment whatever for the handling of this express.

As we have stated, the Express Agency at Glasgow was located in a separate building and the handling of express has always been separate and apart from the duties of railway employees.

As has been stated by the Carrier in its Statement of Facts, at nearly every point on the railroad where clerical forces are employed in station service, a part of their duties is the handling of express as well as baggage and mail, and as evidence of the acceptance of this principle by the employees, there is attached hereto designated as Carrier's Exhibit C-3 a letter addressed by General Chairman Emme to Assistant to the President Pearson under date of January 20, 1955. Particular attention is directed to the following statement from that letter:

"I think you will see the express agency is located separate and apart from the Great Northern and **that this handling is in no way similar to the loading and unloading at other stations.**"
(Emphasis ours)

The Carrier, therefore, holds that in view of the established fact that the handling of express, as well as baggage and mail, is an integral part of the duties of employees covered by the agreement with the Brotherhood of Railway and Steamship Clerks, such handling on the part of clerical employees at Glasgow was in no way a violation of the Agreement between the parties hereto, and in view of the fact that the rate of pay of the claimant herein was substantially higher than that usually applicable to warehousemen who generally handle such shipments at other points, no claim for additional compensation is justified simply because such handling on other trains had previously been handled by Express Company employees.

As a matter of fact, the Carrier feels that if such handling involved a claim of any nature, such claim could logically be only entered by employees of the Railway Express Agency for the non-performance of work formerly performed by them, and not by Great Northern employees who suffered no loss in earnings by the performance of this work commonly accepted all over the railroad as being a portion of their duties when required to perform same.

The Carrier, therefore, holds:

First: It has been clearly established and not disputed by the Employees that, in general, the handling of express to and from trains may properly be performed by employees covered by agreement with the Brotherhood of Railway and Steamship Clerks.

Second: That in the case in question at Glasgow, the claimant herein was in no way held responsible for the safety of express shipments after having been placed in the baggageroom by him.

Third: That the rate of pay of the claimant herein was higher than that normally paid employees (usually classed as warehousemen) who handle express, mail and baggage between train and baggageroom and vice versa and that such work was performed within his regularly assigned work day hours.

Fourth: That no violation of any schedule rule in the agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks exists under the circumstances in this case, and that, therefore, the claim must be denied.

It is hereby affirmed that all data herein submitted in support of Carrier's Position has been submitted in substance to the Employee Representatives and made a part of the claim.

(Exhibits not reproduced)

OPINION OF BOARD: At Glasgow, Montana, the Railway Express Company maintains its own office and prior to April 30, 1954 its own employees handled the express work there. On that date the Carrier discontinued trains 223 and 224 and express formerly handled on those trains was there-

after carried on trains 27 and 28 which arrived at Glasgow when no Express Company employees were on duty. The Carrier then had its own employees handle the shipments between the baggage room and the trains, work which formerly had been done by the Railway Express Company employees.

Claimant, contending that the performance of such work by Carrier's employees was a violation of the applicable Agreement, filed a claim on May 8, 1954 for an additional 2 hours pay for certain days he did this additional work. That claim was amended on June 7, 1954 by the Division Chairman in progressing it to Carrier's Superintendent so as to demand an additional day's pay for each day claimant did this Express work.

No specific provision of the Agreement is shown to have been violated. Instead all that is asserted is the argument that the handling of express was the exclusive work of the Express Company employees and that Carrier lacked the right to require Claimant to perform this work without additional compensation.

In the meantime, it appears that the Railway Express employees filed a claim protesting the transfer of this work and in January, 1955 succeeded in recovering the work.

In support of its position the Brotherhood points out that "Railway employees such as Telegraphers and Agents perform some similar work and they are paid commissions for the handling of same" but that "our employees receive no payment whatever for the handling of this express".

In advancing the present claim, no specific Rule of the Agreement is alleged to have been violated. Actually, the Agreement does not contain any specific rule that prohibits the Carrier from assigning the duties involved to Claimant.

In Award 4572 (Whiting) a similar claim was presented to us involving the same parties. There we said:

"The violation charged against the Carrier is the assignment of work not covered by the scope rule of the agreement to an employee covered by the Agreement. The scope rule simply specifies the employees covered by the agreement and establishes the various types of work to which the covered employees are entitled and which the Carrier is required to assign to them. It does not, nor does any other rule of the agreement, prohibit the Carrier from assigning other duties to such employees.

"* * *

"Since it has not been shown that the Carrier violated any rule of the agreement the claim is without foundation and must be denied."

See also Award 7916 (Shugrue); Award 7093 (Carter); Award 7113 (Larkin).

Basically it is Claimant's position that it was a violation of the Agreement to assign the express work to him "without additional compensation". The only Rule of the Agreement which might have any application is Rule 50 which provides;

"Rule 50. ADJUSTMENT OF RATES.

"When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for such position will be subject to adjustment by mutual agreement with the duly accredited representative, but established positions will not be discontinued

and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

If in fact there was a sufficient increase in duties and responsibilities as to bring this Rule into play, the procedure provided in the Rule should have been followed rather than a prosecution of this claim.

As we held in Award 7170 (Cluster):

"* * * If the new duties and responsibilities are in fact of sufficient proportion so that the employees feel that they are entitled to additional compensation, their recourse is to negotiation with the Carrier under Section 6 of the Railway Labor Act. See Award 7093."

It is not for this Board to determine rates of pay and we have so held innumerable times, i.e., Award 6803 (Robertson); Award 7093 (Carter); Award 6391 (Elkouri); Award 7922 (Smith).

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim as made denied but without prejudice to seek an adjustment via Rule 50.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of January, 1958.